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IS ANY BENEFIT FROM A LOAN PROHIBITED IN ISLAM?

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It is a well-established rule in the Shariah (Islamic law) that a loan contract is of a charitable nature and as such the lender may not stipulate any excess or benefit from the borrower. In fact, lending on interest is one of the gravest sins that one may commit in Islam. However, it is also known in the Shariah that if the benefit from a loan comes to the lender voluntarily and it is not stipulated in the loan contract then it is permissible. This exception derives from some reports that the Prophet used to repay his debt with some increment, and to this effect he said: "The best amongst you are those who benevolently repay their debts". Moreover, within Islamic law there exist some juristic opinions allowing the lenders to derive some indirect benefits from the loan contract, such as stipulating that the repayment of the debt is to be made in a place different from the one where the loan was first initiated, as this may save transfer costs and effort, or in utilizing, with conditions, the assets mortgaged against the loan. These exceptions may in principle nullify the general understanding that "any loan which results in a benefit is considered a form of usury" in Islam. The paper comes to define the prohibited benefits on a loan in Islam, thereby building the basis for addressing important questions, such as: i) are reciprocal loans prohibited in Islam? ii) is repaying the loan with excess to cater for inflation lawful? iii) is the benefit that pertains to the lender and does not harm or burden the borrower lawful? iv) can the lender in exchange of the loan seek to obtain a commitment from the borrower to engage in some other fair contracts with him? Answering these questions shall help set out the parameters for what constitutes unlawful benefits obtainable from a loan contract, especially given that Muslims may have burdened their transactions with unnecessary restrictions.

Keywords: Loan, Interest, Islam, Benefit, Reciprocal Loans.

Introduction

Usury (Riba), which refers to any increment over the principle - be it big or small - has been strongly condemned and prohibited in Islam. The Qur'an states that those who do not abandon the practice of usury should prepare themselves for a war against God and His prophet (reference). Riba, arises when in a loan contract the borrower has to return a stipulated increase in quantity or quality to the lender. The additional amount is charged for the time that the borrower takes to settle the loan. Hence, the idea of usury is inextricably tied to the loan contract where a lender stipulates that the borrower should pay him an additional amount over and above the principal.

In Islam a loan is considered a gratuitous contract. The gratuitous nature of a loan is in line with the spirit of the Shariah, which prohibits exploitation and injustice. Shariah texts encourage Muslims to provide a loan to a person who needs it without any expectation of compensation (reference). A condition imposed by the lender on a borrower to the benefit of the former does not only deprive the loan contract

from its gratuitous nature but also nullifies it and renders it usurious. Muslim jurists have therefore devoted extensive discussions to the loan contract and in particular to the sorts of benefits that a lender may receive from the borrower.

There are Hadith (reports/traditions of the Prophet) stating that "anyone who provides a loan should not stipulate anything on the debtor except its repayment". On the other hand, the Prophet is reported to have encouraged the borrower to return something extra over and above the loan to appreciate the good deed of the lender: "the best among you are those who repay their debts handsomely"[1]. Jabir Bin 'Abdullah, a companion of the Prophet, reported that "the Prophet repaid me the debt he owed me and gave me an extra amount". [2]

A critical analysis requires a comprehensive study of all the relevant reports on this issue. These reports generally mention and clarify two issues; firstly, the lender should not receive any stipulated addition or benefit from the borrower; secondly any addition or benefit that comes to the lender voluntarily and is not stipulated in the loan contract is permissible. Thus, according to Shariah the borrower should not be prevented from voluntarily returning an additional amount over and above the loan to the lender. However, in any case such an excess should never be stipulated in the loan contract. The voluntarily return of a benefit does in no way change the charitable nature of the loan contract. On the other hand, if an excess is stipulated this will change the charitable nature of the loan contract into usury. The fact that a borrower may voluntarily give the lender an additional amount over and above the loan shows that a benefit to the lender per se is not prohibited. It is the stipulation by the lender that makes the benefit prohibited.

The subject of this paper is the loan that provides benefit to the lender. It critically examines the idea of a conditional benefit to the lender that does not harm the borrower. It also discusses different juristic opinions on the validity of various benefits that a lender may derive from a loan contract. These include compensating the lender for inflation, a stipulation by the lender that the loan is settled at another place (*suftajah*), benefiting by stipulating another loan or reciprocal loans and benefitting from the loan by stipulating a sale contract. It also discusses the issue of deriving a benefit from the loan through utilisation of the mortgaged property by the mortgagee.

The Meaning of a Loan (*Qard*)

Qard refers to a gratuitous contract where a lender gives a certain homogenous property to a borrower who will return a similar property to the lender upon demand.[3] It applies to properties of consumable nature, and this is why lent items have to be homogenous, so that the borrower can return similar properties.

Loan (*Qard*) and Debt (*Dayn*)

Dayn is more general and a border concept than *qard,* and it is not necessarily gratuitous. *Dayn* occurs when the settlement of a certain financial right created through contracts is postponed to future, while *qard* is created by the provision of cash to the debtor. For example, a deferred price in a sale contract or unpaid damages is considered *dayn*. Cash provided to others on loan terms is also *Dayn*, whereas *qard* is more specific and may arise only through a loan contract. Hence every *qard* is a *dayn* but not vice versa.[4]

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[1] Reported by Bukhari, No.2305, and Muslim, No1601.
[2] Reported by Bukhari, No.443, and Muslim, No715.
[3] Al-Bahuti, Musa bin Younus, *Kashaf Al-Qina'* (Dar Al-Fikr, Beirut, 1402), Vol. 3, p. 312. See also the linguistic definition of al-Qard in Al-Razi, *Mukhtar al-Sihah*.
[4] Ibn A'bideen, *Hashiyah*: vol. 4, p. 169.

Legality of the Loan (*Qard*) Contract

A loan is a gratuitous contract and a praiseworthy act for which a lender is rewarded by Allah. The gratuitous or charitable nature of the loan contract is established by Prophetic reports which promise rewards to the lender. It is narrated that the Prophet said: "When a Muslim gives a loan twice to another it is counted as a onetime charity".[5]

Accordingly, providing a loan is a recommended act for which a lender is rewarded by God.

The Loan that Provides Benefit to the Lender

Shariah texts clearly prohibit giving a loan on the condition that the borrower should return the loan in a higher quantity, quality or in another type of property.[6] Both the Qur'an and the Sunnah (Hadith) have prohibited the lender from charging the borrower any additional amount. The Qur'an emphasizes that the lender is entitled to receive the principal amount, stating: "O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, take notice of war from Allah and His Messenger. But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly".[7]

This verse clearly prohibits charging any addition over and above the principal in a loan contract and commands that only the principal should be collected.[8]

From the Sunnah, we find a report stating: "any loan which results in a benefit [to the lender] is considered usury".[9]

Although the authenticity of this report is questioned when examined from the perspective of the chain of narrators,[10] its meaning was well received by the scholars such that it was reintroduced as a legal maxim: "any loan which results in a benefit is prohibited".[11]

After analyzing the relevant Shariah texts Muslim scholars from different Jurisprudence schools could infer the general principle that any benefit gained from the loan by the lender is considered a form of usury.[12]

All juristic schools agree that it is prohibited to put a condition in the loan contract that the debtor must return to the lender an additional amount over the loan. It also does not matter whether the additional amount is excessive or little, and it also does not matter whether the additional property is of the same type as the loan property or is of a different type. This is because such benefit defies the gratuitous nature of the loan contract[13]. Qurtubi, a prominent scholar from the 13th century,states that "there is a consensus among Muslim jurists based on the tradition from the Prophet that any stipulation for increase in a loan contract is usury even though if it is a fistful of forage as mentioned by Ibn Mas'ūd or a single grain".[14] The rule that prohibits a conditional benefit in a loan contract is also applicable to a situation when receiving a benefit from a loan is widely practiced as a custom. In such cases a lender would not have given the loan if he had not known that he would receive a benefit from it. Such a custom is invalid as it is in conflict with the rules of Shariah.

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[5] Reported by Ibn Majah, No. 2430.
[6] Ibn Hazm, Ali bin Ahmad. 2001. *Al-Muhallah,* vol. 8, p. 467, Al-Mas´alah 1479.
[7] Surat Al-Baqarah: 2: 278-279, Abdullah Yusuf Ali translation.
[8] See: Ibn Jarir Al-Tabarii, *Jami' al-Bayāan 'An Taawīil Ay al-Qur'āan* (Beiruut: Daar al-Fikr, 1954), vol. 3, p. 109.
[9] Ibn Abi Shayba, Al-*Musannaf*, Vol. 5, p. 80, Hadith no. 436.
[10] See: Al-Sana'i, Muhammad bin Isma'il, *Subul Al-Salāam* (Beiruut: Daar al-Kituab Al-'Arabii, 1998), vol. 3, pp. 104-105, Hadith no. 812.
[11] Zainuddin Ibn Nujaym, *Al-Ashbaah wa Al-Nadhā'air* (Beiruut: Daar al-Kutub al-'Ilmiyyah, 1980), p. 316.
[12] For a discussion see Muhammad bin Ahmad Al-Sherbini, *Mughni Al-Muhtāj* (n.p.) vol. 2, p. 119.
[13] *Ibid.*
[14] Al-Qurtubi, *Al-Jami' li Ahkam Al-Qur'an*, vol. 3, p. 241.

Unstipulated Benefits

Despite the strict prohibition of Riba in Islam, it is a well-established principle in the Shariah that a lender may accept a non-contractual or non-customary unstipulated benefit from the borrower; a borrower may voluntarily return the loan in a better quantity or quality. In Islam, this is not only allowed but is actually recommended. The Prophet is reported to have said that "The best amongst you is the one who generously repays the rights of others."[15]

Based on this report and some others, there is a consensus among the jurists on the permissibility of giving unstipulated benefits to the lender.

Although Muslim jurists agreed on the permissibility of the lender receiving unstipulated benefits there are still some juristic opinions that prohibit it in certain situations.[16] For instance, some jurists ruled that it is prohibited for a lender to receive gifts from a frequent borrower. Others argued for the prohibition of any form of gift prior to the settlement of the loan unless the lender returns the gift by a gift of the same value or deducts it from the loan, or when there is a longstanding habit of exchanging gifts between the lender and the borrower prior to the loan contract. Moreover, there are many narrations from the early Muslim generations that reflect their stringency in the issue of benefiting from the loan, to the extent that they prohibited the borrower from gifting the borrower on any occasion or even receiving him as a guest. This strictness is either a precaution taken to prevent the lender from receiving any benefit from the loan, or it may relate to cases where there is a custom allowing the lender to receive some type of benefit from the loan, or due to the existence of a prior and secret agreement allowing the lender to benefit from the loan.[17]

According to many jurists it is not discouraged to give a loan to a person who is known to be benevolent in settling his loans. They argue that the Prophet was known to be benevolent in settling his loans. Thus, it is not acceptable to discourage people from lending a person who follows the example of the Prophet in repaying his loans. On the contrary, such a person should be preferred in lending over others.[18] However, the lender should be driven by the desire to help the borrower and not by the expected profit that he may receive from the borrower later on. Moreover, the lender is advised to refrain from taking it or that he follows the example of the early Muslim generations by giving it as a charity.

The Shariah has allowed the borrower to pay the lender an excess over the loan amount if the excess is not stipulated in the contract of loan. It shows us that prohibiting the lender from receiving a benefit from the borrower was to protect the right of the borrower, and not to prohibit the benefit itself that the lender receives from the borrower. Otherwise the borrower would be prohibited from paying something extra to the lender even if it was in the form of a gift. Thus, we can limit the aforementioned legal rule (maxim) by modifying it to mean that "every loan which provides a conditional benefit to the lender is considered usury".

Is the benefit that accrues to the lender and does not harm or burden the borrower Halal?

Based on the previous discussion, it should not be understood that it is prohibited for the lender to benefit from the loan if that benefit will not harm the borrower. This was actually the understanding of some jurists, and based on it they allowed the lender to specify a place for the settlement of the loan if doing so will not result in harming the borrower such as by making him incur an extra cost.

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[15] Al-Qurtubi, Abu 'Abdullah. 1967. *Al-Jami' li Ahkāam al-Quran* , vol. 3, p. 241.

[16] Sherbini, *Muqni al-Muhtaj*, vol. 2, p. 119. Hashiyat Ibn 'Abidin: vol. 4, pp. 174 – 296. Hashiyat al-Dasuqi: vol. 3, pp. 225 – 226. Ibn Qudamah, *Al-Mughni*, vol. 4, pp. 391-392.

[17] Ibn Abidin, Muhammad 'Amin. 1987. *Hashiyat (Rad al-Mukhtar ala al-Dur al-Mukhtar*), vol. 4, p. 175; Al-Dasuqi, MuHammad bi AHmad. 1900. *Hashiyah*, vol. 3, p. 224; Al-Nawawi, Abu Zakaria. 1992. *Rawdhat al-Talibin* (Beirut: Dar al-Kutub Al-Ilmiyyah), vol. 2, p. 279; Ibn Qudamah, *Al-Mughni*,vol. 4, p. 391.

[18] Ibn Qudamah, *Al-Mughni*, vol. 4, p. 393; Al-Nawawi, *Rawdat al-Talibin*, vol. 3, p. 276.

Ibn Qudamah, a scholar from the Hanbali juristic school, in the following text clearly allows the lender to receive a benefit which will not harm the borrower. He says: "Ahmad, the school founder, stated that requiring *Suftajah* - settling a loan in a different country - is not allowed in a contract of a loan. However, it was narrated that he allowed it, because he considered it as a benefit for both the lender and the borrower. …. The correct opinion is to allow such a thing, because both parties will benefit from it and neither of them will be harmed. Moreover, the Shariah does not forbid benefits which do not cause harm. In fact, the Shariah permits such benefits. In addition, there is no clear text that prohibits the above-mentioned condition, and therefore, it should be permitted".[19]

Thus, we can modify the legal maxim regarding loans to the following: "every loan which results in a conditional benefit that will harm the borrower is considered usury". It is probable that the prohibition on the lender gaining any benefit from giving a loan, even if it does not harm the borrower, is due to the extreme caution that is taken when dealing with the issue of usury. The concept of a benevolent loan in which the lender does not expect any benefit or gratitude from the borrower is possibly understood from this verse: "If ye loan to Allah, a beautiful loan, He will double it to your 'credit', and He will grant you Forgiveness: for Allah is most Ready to appreciate 'service', Most Forbearing."[20].

It is possible to argue that some might have interpreted this verse that a loan cannot be benevolent (*hasan*) if it benefits the lender in any way. However, lending God is different from lending people, and the meaning of lending to God is to have a pure intention while giving charity and not expecting anything except reward as this is a condition for multiplying reward and earning forgiveness[21]. Thus, it can be said that giving a benevolent loan in which the lender does not expect any reward or gratitude from the borrower is not a mandatory act as long as such a benefit does not cause the debtor any harm or financial cost whatsoever, but is rather a recommended act; its implementation is part of piety and not a duty. For example, one of the Prophet's companions used not to sit under the shade of a house mortgaged to him, because in his opinion it amounted to derivation of benefit from the mortgaged house. However, he did that because of his piety, and not because he was under an obligation to do so (reference).

Is repaying a loan with excess to cater for inflation lawful?

Some Muslim jurists were of the opinion that depreciation of currencies could happen with regard to *fulus*. *Fulus* was a currency with a weak purchasing power that was used alongside the gold *dinars* and the silver *dirham*. *Fulus* were either made from bronze or iron, and were used to buy things of trivial value. The jurists were of the opinion that the value of the *fulus* could drop as it does not have an intrinsic value unlike the silver *dirhams* and the golden dinars, which do. Currencies that are now in circulation are comparable to *fulus* as their values fluctuate. In fact, modern-day currencies are more susceptible to inflation and changes in their value. Thus, juristic opinions regarding *fulus* are equally applicable to currencies and are explored as following.

The majority of the Muslim jurists[22] are of the opinion that changes in the value of a currency do not affect the amount of the loan itself. Accordingly, the borrower is obliged to pay the exact amount taken from the lender regardless of the changes that later affect the value of the currency. Similarly, if the loan was of a certain amount of wheat for example, and it happened that its price decreased or increased, the borrower is obliged to return the exact amount of wheat that he borrowed regardless of its price. This

[19] Al-Mughni, the book of giving a loan, chapter on giving a loan with a condition of paying something extra when settling it, vol. 4, pp. 390-391.
[20] Quran 64:17.
[21] See the commentaries of Al-Qurtubi, Al-Baydawi, Al-Jalalayn, and other commentaries which explain the meaning of a goodly loan.
[22] Ibn Qudamah, *Al-Mughni*, vol. 4, p. 396; Ibn Abidin, *Hashiyat*, vol. 4, p. 24; Al-Seyuti, *Al-Hawi fi al-Fatwa*, vol. 1, p. 151.

position is taken by the OIC Fiqh (Jurisprudence) Academy[23] in its decision number four taken in the year 1988 that any change affecting the value of the loan's currency bears no effect on the amount of the loan, and that loans must be settled with the exact same amount of money, regardless of the fluctuations in the value of the loan's currency. The assembly reconfirmed its stance on the matter in another decision issued in the year 1993.[24]

Other jurists however, are of the opinion that the changes in the value of the currency decide the amount of money that the borrower has to pay. As such the borrower has to settle the loan based on the current value of the currency. This is one of the two opinions put forward by Abu Yusuf - a prominent early jurist of the Hanafi school of law. This opinion is generally followed within the Hanafi school.[25] With regards to the time at which the value of the loan is determined, Abu Yusuf is of the view that "it is the day the borrower receives the loan from the lender"[26].

Of the two opinions, the Hanafi opinion seems stronger as it protects the right of the lender especially in cases of high inflation when the value of a currency depreciates sharply. The purchasing power of a currency on the date when the loan takes place may not be the same as its purchasing power on a date when the loan is settled. This is not in any way associated or connected to usury since the value of the paper currency is only symbolic and subject to fluctuations. Therefore, while settling a loan a borrower has to consider the purchasing power of the currency at a time when the loan took place and its purchasing power at a time when the loan is settled. Verse 2: 279 of the Quran states that a creditor who repents from usury is entitled to the return of his "principal" without interest. The verse further states: "you will do no wrong, and neither you will be done wrong". It is therefore possible to argue that a creditor is entitled to the return of his principal. If the value of the money he has received as the settlement of his debt is lesser than the value of the money he has given as a debt, then he has not received the principal to which he is entitled.

Benefiting through the stipulation of a different place for repayment of the loan

Muslim jurists are of the opinion that a creditor can exercise his right to demand the loan if he happens to meet the debtor in a place (i.e. city or country) other than the place in which the loan was granted. However, the lender cannot compel the borrower to settle the loan if the value of the loan in that place is more than its value in the place where the loan was taken. For instance, the new country may have a different currency which is of a higher value from the one in which the loan was borrowed. The debtor would incur an extra cost in the exchange rate if he were to convert the loan currency into this new currency, unless the lender agrees to be paid with the new currency the exact correspondent value of the debt in its original currency. [27]

However, the issue takes a different dimension when a creditor stipulates another place for the settlement of the loan. Muslim jurists used the term "*Suftajah*" to describe a loan contract where a creditor

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[23] The Fiqh Academy is a legislative body that issues Fiqh resolutions, and it is based in Jeddah, Saudi Arabia.

[24] See Decision no. 4 regarding the change in the currency's value, the 5th Conference, Kuwait, 1409/1988, and Decision no. 79 regarding several issues related to currency, the 8th Conference, Brunei, 1414/1993. Both decisions were mentioned by Dr. Wahbah al-Zuhayli in his book *al-Fiqh al-Islami wa Adilatuhu*: vol. 9, pp. 558 – 624.

[25] Ibn 'Abidin, *Hashiyat* (Rad al-Muhtar ala al-Dur al-Mukhtar), vol. 4, p. 24; Al-Haskafi did not mention in al-Dur al-Mukhtar any disagreement in this issue; instead he says that there is a consensus in the Hanafi School of Jurisprudence that the amount of the loan will not be affected by the change in the value of its currency. This statement is an error on the part of al-Haskafi. See: Ibn Abidin, *Hashiyat,* vol. 4, p. 242.

[26] Ibn al-Humam, *Fath al-Qadir*, vol. 6, p. 279; Ibn 'Abidin, *Hashiyat*, vol. 4, p. 242.

[27] Ibn Qudamah, *Al-Mughni*, vol. 4, p. 396; Al-Nawawi, *Rawdhat al-Talibin*, vol. 3, p. 278; Al-Buhuti, *Kashaf al-Qina'*, vol. 3, p. 319; Ibn 'Abidin, *Hashiyat*, vol. 4, p. 172.

stipulates another place for the settlement of the loan.[28] A creditor by stipulating another place for the settlement of the loan can benefit in two ways. Firstly, he can avoid the risk of insecurity that is usually associated with the transfer of a large sum of money from one place to another, and secondly, he can avoid the payment of fees that he would otherwise have to pay for the transfer of his money from one place to another. From a Shariah-perspective, we can ask whether these benefits to the creditor are prohibited?

Some jurists have prohibited any condition that can benefit the creditor in any of these two ways. According to them any condition stipulating the settlement of loan in a place other than the one in which the loan is given, benefits the creditor and is prohibited.[29] Other jurists argue that a lender may benefit from the loan contract provided this does not harm the borrower. Accordingly they argue that it is valid to stipulate the settlement of a loan in another place provided that it does not cause any inconvenience to the debtor and there is no risk of insecurity.[30] They did not prohibit it if it will not result in any harm to the borrower.

Some other jurists have taken a middle ground. They argue that it is prohibited to stipulate that the borrower should pay for any cost that involves the settlement of debt in the designated place. However, as to the benefit that the creditor may derive by transferring his money to the designated place without taking the risk of insecurity, they view this condition as strongly disliked to the extent of prohibition.[31] The reason why they have not ruled it as prohibited could be attributed to the fact that the benefit of avoiding the risk of insecurity is not tangible. Furthermore, the existence of this risk is not certain.

In fact, the last opinion seems to be more accurate and in line with the Shariah principles. This is because any benefit that the lender gets without harming or burdening the borrower should not be prohibited. As for the issue of prohibited benefit, it is the benefit that can cause harm to the borrower, which means that the loan which can bring benefit to the two parties and causes no harm to any one of them nor contradicts with any Shariah principle shall not be prohibited, especially when we know that the Shariah does not prohibit a benefit which harms no one. Moreover, there is no clear evidence that prohibits *Suftajah*.

The juristic rule that any loan which provides benefit to the lender is considered usury is a general rule, which cannot be applied to *Suftajah*. It is unanimously accepted that the borrower may voluntarily return the loan to the lender with an excess over and above the value of the loan. This means that any benefit that accrues to the lender is not prohibited per se provided it does not harm the borrower. It, therefore, can be argued that a lender may stipulate that the borrower shall settle the loan in a place different from that where the loan was granted. However, *Suftajah* should be prohibited if this condition causes any harm to the borrower such as incurring an extra cost while the lender has refused to compensate him for this expense.

Benefiting through stipulation of another contract:

The following discusses whether the lender can stipulate engaging with the borrow in another contract.

1. Stipulation of a counter loan (reciprocal loan):

When a lender stipulates that a borrower can only receive a loan if he provides another loan to him either prior to the first loan or at a later date, then this loan can be considered a reciprocal loan. A question that

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[28] The word *suftajah* originates from Persian and was incorporated into the Arabic language. Its origin root is *saftah*, which means the perfect thing in Persian, it was called Saftah due to the perfection that is in loan. See: Ibn ‘Abidin, *Hashiyat*, vol. 4, p. 295.

[29] Al-Dasuqi, *Hashiyat al-Dasuqi*, vol. 3, pp. 225-226; Al-Shirazi, Abu Ishaq Ibrahim ibn 'Ali, *Al-Muhadhab* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1995), vol. 1, p. 304.

[30] Ibn Qudamah, *Al-Mughni*, vol. 4, pp. 390-391.

[31] Ibn ‘Abidan, *Hashiyat*, vol. 4, p. 295-296.

can be raised is whether giving a loan on the condition of receiving another loan is considered a benefit for the lender, and thus prohibited? The following are some statements of the Muslim jurists on the matter.

Many jurists prohibit such a stipulation based on the following arguments: "there is no disagreement that it is not allowed for a person to lend another on the condition that the borrower will lend him money later"[32]; "Lend me and I will lend you is a loan that will result in a [prohibited] benefit"[33]; "If the lender stipulated in a contract of loan that the borrower should rent him his house, or sell him something, or lend him an amount of money, then this contract is prohibited"[34]; "If either the borrower or the lender stipulated in the loan contract that one of them should sell, rent or lend the other as a condition for receiving the loan, then this contract will be prohibited".[35]

We can note from the above mentioned statements that the jurists predicated the prohibition of contracting reciprocal loans on the view that it involved some benefit to the creditor. They quoted the legal maxim: "any loan which results in a benefit is considered usury". However, the past discussion in relation to this maxim concludes that the unlawful benefit is only the one that causes financial loss to the borrower. If, however, both are benefiting without burdening the borrower then this benefit is lawful. In the context of reciprocal conditional loans, it can be said that if the two counter loans are of the same amounts and for the same durations then no parties will be deriving extra benefit from the other, but yet no one is effectively doing a benevolent act to the other since both are committed to lend each other the same amount and for the same length of time. For example, one party pledges to lend the other $100,000 for 90 days starting on June 1 in exchange for a counter loan of the same amount and for 90 days when needed by the first lender. It is true that such a transaction is void of benevolence but it is also void of Riba due to the fact that no party is deriving extra benefit from the other or causing him in the final analysis a financial loss.

Thus, it can be said that there is no genuine reason to invalidate reciprocal loans so long as the loans are equal in amount and duration. It is true that the loan involves no benevolence, but benevolence is not a condition in the contract; what is necessary in the contract of loan is the avoidance of Riba or the unjustified enrichment on the lender at the expense of the borrower. If both parties benefit equally from the transactions, then they can be deemed as valid.

Reciprocal loans in different currencies (to hedge against exchange rate fluctuations)

This type of a reciprocal loan involves two different types of currencies. For example, an individual might possess an amount of a certain currency, but is in need of an amount of another currency that another individual has, while the latter is in need of the currency which the former has. Both of them feel, due to unfavourable exchange rates, that it is not preferable to convert the currencies they have with the currency that they need. Subsequently, they can enter into reciprocal loans in different currencies. At the time of settlement each side will get back the loan in the same currency in which they provided the loan. This arrangement is mutually beneficial as both parties are able to avoid conversion of their currencies.[36] The purpose behind providing a loan on the condition of receiving another loan in a different currency is not to borrow money but to obtain the money in different currencies. Accordingly, the issue of harm to the borrower does not arise provided the value of the two loans remains equal. If the value of one of the two loans is higher or one of the two loans is given for a longer period of time the transaction is not permissible. For example, if one dollar is equal to four Turkish Liras and two traders agree to borrow

[32] Al-Hattab, *Mawahib Al-Jalīil*, vol. 4, p. 391.
[33] Al-Dardeer, *Al-Sharh Al-Kabīir*, (with the commentary of Al-Dusuqi), vol. 3, p. 364.
[34] Ibn Qudamah, *Al-Mughni*, vol. 4, p. 211.
[35] Al-Bahuti , *Kashaf Al-Qina'*, vol. 3, p. 317.
[36] See Sa'ad bin Hamdian Al-Lihyanii "Reciprocal Loans", *The Journal of Abhath Al-Iqtisad Al-Islami*, King Abdul Aziz University, Vol. 14, p. 107; see also Rafiiq Yunus Al-Masri "Reciprocal Loans", *The journal of Abhaath Al-Iqtisad Al-Islami*, King Abdel Aziz University, Vol. 14, p. 101.

money from each other in dollars and liras where one of them lends the other $ 1000 for one year on the condition that he receives TL 5,000 for a similar period of time, then it is not permitted. In this case the lender of $1000 will benefit as he would receive an extra loan of TL 1,000. Thus, providing reciprocal loans in different currencies is allowed if the purpose of the parties is to avoid the exchange of their currencies and when both loans are equal in value.

2. Stipulating a commitment from the borrower to engage with him in some other fair transaction

It is a common practice nowadays in some societies to find a trader lending a farmer an amount of money to help him with his farming activities on the condition that the farmer will put his crops on sale with the trader or sell his crops to him at the market price. The benefit to the trader will be guaranteeing a good for his trade, especially if the type of the crop is of certain quality which is rare in the market. This practice would be deemed unlawful if we were to adopt the maxim "any loan which results in a benefit is considered usury" at face value, or if we prohibit any transaction that contains two contracts - one of which is loan - because some Shariah texts prohibit combining between loan and sale in one transaction. The rationale for such a prohibition is that the agreed selling price may favour the lender. However, if we consider the preponderant view with regards to the benefit of a loan which brings no harm to the borrower and the view which does not prohibit a transaction merely because it involves both a sale and a loan together, but because of the potential negative consequences caused by having both contracts in a single transaction, such as the price being lower than the market price where the lender is the buyer, then there is no reason to invalidate such an agreement. However, in order to make sure that usury or exploitation will not take place the following conditions must be met:

1. The two parties must not decide on the price for the crop before its harvest, and it has to be the market price then. This is because the price of the crop may appreciate from the day of lending to the day of harvest, thus denying the farmer from making more profit.
2. The method of price payment (cash-credit) must not be affected by the loan (i.e. the farmer should be treated by the lending trader equally to the other farmers who did not receive a loan from him with respect to the method of price payment).
3. The selling of the crop by the farmer to the trader should not lead to an increase in the cost for the farmer nor should it deny him the chance of making more profit by selling to others. The trader should buy the crop at the highest price given to the farmer.

With these three conditions usury and exploitation will not take place, and there would be no reason for the prohibition of such a transaction except for the fact that the transaction contains a loan with a sale according to those who believe that the combination of loan and sale triggers a Shariah concern. However, we have concluded earlier that the invalidity of such a combination should be restricted to pricing the other contract besides a loan in a way that favours the lender or caters for the loan (i.e. to charge interest indirectly through the price in the sale the contract).

As for the benefit that the trader derives from the loan in this transaction, it is not in fact at the expense of the borrower, because no harm would befall the borrower by selling his crop to this trader or another trader if both traders are willing to purchase the commodity at its market price.

Benefiting from the assets mortgaged against loans

It is permissible in Islam for a creditor to require the debtor to provide a collateral or a guarantor in order to strengthen the claim of debt and to guarantee its payment. The Quran has referred to the permissibility of taking a pledge in the following verse: "If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose)".[37]

[37] Surat Al-Baqarah: 2:283.

However, according to some jurists, the pledge taken must be only for the specific loan for which the pledge is stipulated and should not be extended to cover preceding loans. There should not be any stipulation in the loan contract that would require that the pledge, guarantee or collateral should also be extended to cover preceding debts. As this would mean that the lender has benefitted from the present loan by using it to require collateral for a previous loan. The present loan for which the pledge is required should not be related to the previous loan as it would provide benefit to the lender. He would obtain collateral for a previous loan that was initially not covered by a pledge or a guarantee and this means that the lender has benefited from his new loan.[38] This shows how cautious the jurists were when it came to the issue of Riba.

The utilization of the mortgaged property

(As mentioned earlier) There is no harm in stipulating that collateral must be provided by the borrower to secure the loan. However, is it permissible for the lender cum mortgagee to benefit from the mortgaged property? Muslim jurists looked into the matter of the mortgagee benefiting from the mortgaged property from the aspects of whether the mortgage is taken as a result of a loan or as a result of a sale contract. The matter in question here relates to the former. There are three different opinions from the Muslim jurists with respect to this issue.

One opinion argues that it is prohibited for the mortgagee to utilize the mortgaged property, because he will be then benefiting from a loan. If the mortgagee is charged to pay the market price for the use of the mortgaged property then it might be allowed due to the absence of the suspicion of Riba.[39]

Another juristic opinion holds that it is prohibited for the mortgagee to benefit from the mortgaged property. This is because the mortgaged property and its benefit belong to the mortgagor. Their argument is based on the following Hadith: "the mortgaged property cannot be forfeited from its owner who has mortgaged it, but rather he will continue to receive its benefits and bear its expenses". [40]

Other jurists argue that since the mortgaged property and its benefit belong to the owner, the mortgagee cannot use it except with the permission of the mortgagor. If with permission, then he can use and benefit from the mortgaged property. For example, according to them even if a book is mortgaged, the mortgagee cannot read it except with the permission of the mortgagor. and he can with his permission.[41]

Another juristic opinion differentiates between a mortgaged property which needs upkeep, such as food and maintenance for livestock, and a mortgaged property which does not need upkeep, such as a house. The mortgaged properties which need upkeep can be benefited from by the mortgagee (lender) without the need to get permission from the mortgagor, provided that the value of the benefit is equal to the amount spent on it. The reason for its permissibility is its compensatory nature where the mortgagee pays for the maintenance of the animal and in return is permitted to benefit from it. As for the mortgaged properties that do not need any provisions, the mortgagee cannot benefit from it without giving the mortgagor a fair market price as compensation. The absence of compensation or paying the owner a lower price than the market price would mean that the lender is benefiting from the loan at the expense of the borrower.[42]

In fact, this stand is predicated on the following Sunnah report: "The mortgaged animal can be used for riding as long as it is fed and the milk of the milky animal can be drunk according to what one has spent on it. The one who rides the animal or drinks its milk should provide the expenditures".[43]

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[38] See: Nawawi, *Rawdat Al-Talbin*, vol. 3, pp. 276-277; Ibn Qudamah, *Al-Mughni*, vol. 4, p. 391.
[39] Al-Dasuqi, *Hashyat*, vol. 3, p. 246.
[40] Reported by Al-Bayhaqi, No. 10982, and also by Ibn Majah , No. 2441.
[41] Kasani, *Al-Badai' Al-Sanai'*, vol. 6, p. 146; Ibn 'Abidin, *Hashyat*, vol. 5, pp. 310-311.
[42] Al-Bahuti, *Kashaf Al-Qina'*, vol. 3, p. 355; Ibn Qudamah, *Al-Mughni*, vol. 4, pp. 467-469.
[43] Reported by Al-Bukhari No. 2377.

Thus, if the hay of the animal is provided by the mortgagee then he can benefit from it as a compensation for what he spends on it. They further say that the phrase "according to what one spends on it" in the above-mentioned report proves that the benefit is a compensation for the expenditure.

In summary, we can say that it is permissible for the mortgagee to benefit from the mortgaged property provided he gives the fair market value of such a benefit to the mortgagor, whether through cash payment or payment of the necessary expense needed to maintain the mortgage. Granting permission to the mortgagee to utilize the mortgaged asset is sufficient according to some juristic opinions, but the permission must be genuine, because the mortgagor may be compelled to give such permission in order to convince the lender to give him money. In this case the permission is not real and cannot be treated as a pure gift granted by the borrower to justify such benefit for the lender.

Accordingly, the contemporary practice in some Muslim countries where the lender takes the borrower's land or a house as a mortgage and then benefits from it, does not conform to the opinions of any juristic school and is therefore controversial.[44] The borrower or mortgagee is not provided with a fair compensation in exchange for the benefit that the lender derives from the mortgaged land or house. Furthermore, there is no permission from the mortgagor to allow the mortgagee to benefit from the mortgaged land or house. Even if granted, it is not genuine since the mortgagee will not provide the loan if the permission is not granted. In essence, such a loan is provided for the sole purpose of benefiting from the mortgage.

Conclusion

The study shows that there are some benefits which the lender can derive from the loan agreement upon certain conditions. These benefits can be summarized in the following points:

- The excess on a loan which the borrower may willingly pay to the lender is valid, and the lender can accept it as long as it is a pure gift and is not stipulated in the loan agreement, whether contractually or implicitly.
- Some Islamic juristic schools allow the lender to stipulate a specific place for the repayment of the loan at his or her own convenience so long as this would not financially burden the borrower. This shows that the benefit that the lender may obtain from the loan is valid as long as it does not harm the borrower.
- Stipulating a counter loan contract can be validated if both loans are of the same amount and duration. Although such agreement involves no pure benevolence from the lender, it involves no Riba either.
- Mutual benefits in loan agreement are basically lawful, and they include obtaining a commitment from the borrower to engage in some other fair transaction with the lender in a way that does not deny him any privilege.
- If the lender utilizes the asset mortgaged against the loan, it has to be done by paying the borrower a fair market rate, or it has to be against urgent expenses incurred by the lender to maintain the mortgaged asset after the borrower has failed or refused to pay these expenses. Furthermore, the lender may utilize the mortgaged asset if this comes as a pure gift from borrower and if the borrower's permission is genuine.
- In general, in a loan agreement, any benefit that the lender receives and carries neither harm nor financial loss to the borrower, is basically legitimate and cannot be construed as Riba.

[44] To read more about this issue see: Ibn 'Abidin, *Hashyat*, vol. 5, p. 310.

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